



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

IN THE MATTER OF:	)	Docket No. CWA-08-2003-0077
	)	
The Mills Corporation	)	
a Delaware Corporation	)	CONSENT AGREEMENT
d/b/a Colorado Mills, LLC	)	
	)	
Respondent.	)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, The Mills Corporation, by their undersigned representatives, hereby consent and agree as follows:

1. On July 11, 2003, Complainant issued a Complaint alleging certain violations of the Clean Water Act ("Act"), § 301 (a), 33 U.S.C. § 1311(a). The Complaint proposed a civil penalty for the alleged violations of the storm water requirements specified in the Colorado Discharge Permit System ("CDPS") permit no. COR-030000.

2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint and, thereby makes no admission of liability.

3. Respondent waives its right to a hearing before any tribunal, to contest any issue

of law or fact set forth in the Complaint, or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. Respondent consents and agrees that not more than thirty (30) calendar days from the date of a signed final order in this matter, Respondent shall pay a civil penalty in the amount of Forty Four Thousand, One Hundred and Twenty Two Dollars (\$44,122.00) in the manner described below in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. The date the payment is made is considered to be the date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.
- b.. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank  
Lockbox 360859  
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier.:

U.S. EPA, 360859  
Mellon Client Service Center Rm 670  
500 Ross Street  
Pittsburgh, PA 15262-0001

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004  
TREAS NYC/CTR/  
BNF=/AC-68011008

Copies of the check shall be sent to:

Lee Hanley, Environmental Engineer  
Technical Enforcement Program (8ENF-W-NT)  
U.S. EPA Region VIII  
999 18th Street, Suite 300  
Denver, CO 80202-2466

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region VIII  
999 18th Street, Suite 300  
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, **interest accrues from the date of the final consent order, not the due date**, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1<sup>st</sup> late day, 61 days of interest accrues).

- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 61<sup>st</sup> day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per year penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 151<sup>st</sup> day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
- f. Respondent further agrees and consents that if Respondent fails to pay the entire penalty amount within 30 days of the date on the final order, the full penalty amount proposed in the Complaint shall become immediately due and owing by Respondent.

6. The penalty specified in paragraph 5, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

7. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Clean Water Act and its implementing regulations.

8. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other Federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent Agreement.

10. Pursuant to 33 U.S.C. § 1319(g)(4), on August 3, 2003, public notice was provided of the filing of the Complaint which is the subject of this Consent Agreement.

11. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

12. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

13. Each party shall bear its own costs and attorney fees in connection with this matter.

14. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil

settlement of the specific violations alleged in the Complaint and the inspection report dated November 26, 2002.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant.

Date: **1/09/04**

By: **SIGNED**  
Carol Rushin, Assistant Regional  
Administrator, Office of Enforcement  
Compliance and Environmental Justice

Date: **1/13/04**

By: **Alicia N. Hoegh**  
Elyana Sutin, Senior Enforcement Attorney  
Alicia N. Hoegh, Enforcement Attorney

THE MILLS CORPORATION

Date:

By: **SIGNED**  
Terry Fitzgerald  
Executive Vice President, Domestic Development

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **THE MILLS CORPORATION, DOCKET NO.: CWA-08-2003-0077** was filed with the Regional Hearing Clerk on January 13, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Alicia Hoegh, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on January 13, 2004, to:

Allan L. Hale, Reg. No. 14885  
John G. Lubitz, Reg. No. 20108  
Hale Hackstaff Friesen, LLP  
1430 Wynkoop, Suite 300  
Denver, CO 80202

and pouch mailed to:

Honorable Spencer T. Nissen  
Office of Administrative Law Judges (1900L)  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington, DC 20460-2001

January 13, 2004

**SIGNED**

\_\_\_\_\_  
Tina Artemis  
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE  
ON JANUARY 13, 2004.**



